

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Jeffrey W. Pate, Petitioner-Appellant, v. Polk County Board of Review, Respondent-Appellee.	ORDER Docket No. 12-77-0554 Parcel No. 030/05506-000-000
--	---

On May 15, 2013, the above-captioned appeal came on for hearing before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant Jeffrey W. Pate was self-represented. Assistant County Attorney Ralph Marasco, Jr. represented the Polk County Board of Review. The Appeal Board having reviewed the record, heard the testimony, and being fully advised, finds:

Findings of Fact

Jeffrey W. Pate is the owner of a residential, single-family property located at 2210 Woodland Avenue, Des Moines, Iowa. The property is a two-story dwelling built in 2002 with 1248 square-feet of total living area and a 611 square-foot unfinished basement. The home also has a 48 square-foot deck and a 143 square-foot open porch. The site is 0.172 acres.

The real estate was classified residential on the January 1, 2012, assessment. It was valued at \$133,900, representing \$16,000 in land value and \$117,900 in dwelling value. There was no change from the 2011 assessment. Pate protested the assessment to the Polk County Board of Review on the ground that the property was assessed for more than the value authorized by law under section 441.37(1)(a)(2), asserting the correct value was \$110,000. The Board of Review granted the protest, in part, reducing the assessment to \$122,100, representing \$16,000 in land value and \$106,100 in

dwelling value. The reason for the reduction was that “there has been a change in value since the last reassessment.”

Because there was no change in value from the 2011 assessment, the only ground this Board can consider on Pate’s 2012 appeal is whether there has been a change in value since the last reassessment. Iowa Code §§ 441.35(2), 441.37(1)(b); *Eagle Food Ctrs., Inc. v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 862 (Iowa 1993). This is the only ground available in an “interim year,” like 2012, when the assessor has not changed the property’s value from the previous year. *Id.* Although this ground was not pled by Pate to the Board of Review, we find the Board of Review acquiesced to the ground by lowering the assessment due to a change in value. This is the only ground we will consider.

Pate purchased the subject property for \$107,000 in February 2009. The property was a “real estate owned” property held by a bank. Because the sale was from a bank it is not considered an arm’s-length transaction for assessment purposes. Additionally, we do not consider a 2009 sale price to be a reliable indicator of a 2012 value in this case. For this reason, we do not give the purchase price of the subject property consideration.

Pate testified the subject is used as a rental property and that he owns other rentals in the area, so he believes he “knows the market for properties in this area.” He submitted two appraisals of the subject property in support of his claim.

The first appraisal was completed by Brent Kimble of The Appraisal Company, Urbandale, Iowa, with a valuation date of November 2011. Kimble developed only the sales comparison approach to value and concluded a value opinion of \$107,000. We do not find it necessary to analyze this appraisal because the effective date of value essentially reflects a value for the January 1, 2012, assessment.

The second appraisal was completed by Betsy Pokorny of Des Moines Real Estate Services, Des Moines, Iowa, with a valuation date of April 2012. Pokorny developed only the sales comparison approach to value and concluded a value opinion of \$110,000. Like Kimble's appraisal, we find Pokorny's appraisal reflects a value opinion for the January 1, 2012, assessment.

The Board of Review submitted three properties it considered comparable, as well as the cost approach developed by the assessor's office of each of the properties. The comparables' sale prices range from \$149,350 to \$205,000, suggesting the subject property is not over-assessed. However, the sales were unadjusted for differences and therefore we do not rely on them for a determination of value. Overall, we find the properties similar in appearance; however, Pate asserts they are in different neighborhoods and thus not comparable. While we note the properties have different neighborhood codes, Pate did not provide any support for his assertion that they are not comparable for this fact alone.

Regardless, it is ultimately Pate's burden to demonstrate a change in value has occurred and we find he failed to provide sufficient evidence to support this claim. While Pate submitted evidence of the property's value as of January 1, 2012, that alone is not sufficient to succeed on a downward change in value claim under sections 441.35(2) and 441.37(1)(b). Both the 2011 and 2012 values are necessary to establish a change in value since the last assessment. *Equitable Life Ins. Co. v. Bd. of Review of Des Moines*, 252 N.W.2d 449, 450 (Iowa 1977). The assessed value cannot be used for this purpose. *Id.*

Conclusion of Law

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds

presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. § 441.21(1)(b). If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2). The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

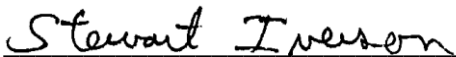
In a non-reassessment or "interim" year, when the property's assessment has not changed, a taxpayer may challenge its assessment on the basis that there has been a change in value from the immediately preceding assessment year. Iowa Code §§ 441.35(2), 441.37(1)(b) (2013); *Equitable Life Ins. Co. v. Bd. of Review of Des Moines*, 252 N.W.2d 449 (Iowa 1977). For Pate to be successful in his claim of change in value, he must show a change in value from one year to the next; the beginning and final valuation. *Equitable Life Ins. Co.*, 252 N.W.2d at 450. The assessed value cannot be used for this purpose. *Id.* Essentially, it is not enough for Pate to prove the last regular assessment was wrong; such a showing would be sufficient only in a year of regular assessment. *Id.* at 451.

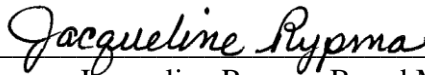
Pate provided two appraisals in support of his position that the subject property is over-assessed. The only ground available to him, however, is that there has been a change in value. Both of


Pate's appraisals opine a value reflective of January 1, 2012. He did not provide evidence of the subject property's value as of January 1, 2011. Both values are necessary to establish a change in value and therefore Pate did not provide sufficient evidence to succeed in his claim.

THE APPEAL BOARD ORDERS the assessment of Jeffrey Pate's property located at 2210 Woodland Avenue, Des Moines, Iowa, as set by the Polk County Board of Review is affirmed.

Dated this 24th day of June, 2013.


Stewart Iverson, Presiding Officer


Jacqueline Rypma, Board Member


Karen Oberman, Board Member

Copies to:

Jeffrey W. Pate
735 32nd Street
Des Moines, Iowa 50312
APPELLANT

Ralph Marasco, Jr.
111 Court Ave., Room 340
Des Moines, IA 50309
ATTORNEY FOR APPELLEE

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>June 24, 2013</u> .	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
	
Signature _____	